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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

GROVER TRASK et al.,

Plaintiffs and Respondents,

v.

COLLEEN NICOL, AS RIVERSIDE  
CITY CLERK,

Defendant and Appellant;

REBECCA SPENCER, AS RIVERSIDE  
COUNTY REGISTRAR OF VOTERS,

Defendant and Respondent;

RUSTY BAILEY, AS RIVERSIDE  
CITY MAYOR et al.,

Real Parties in Interest and  
Appellants.

E065817

(Super.Ct.No. RIC1603840)

OPINION

APPEAL from the Superior Court of Riverside County. John D. Molloy, Judge.

Reversed with directions.

Colantuono, Highsmith & Whatley, Michael G. Colantuono, Ryan Thomas Dunn and Gary B. Bell for Defendant and Appellant.

Grover Trask, Elaina Gambera Bentley and Kelli M. Catlett for Plaintiffs and Respondents.

No appearance for Defendant and Respondent.

No appearance for Real Parties in Interest and Appellants.

The trial court granted in part the writ petition of Grover Trask, Elaina Gambera Bentley, and Kelli Catlett (Petitioners). The writ petition concerned a ballot measure that would have transferred authority for the prosecution of misdemeanors within the City of Riverside (the City) from the District Attorney's Office to the City Attorney. The trial court ordered (1) the title of the measure be changed; (2) the author of the impartial analysis be changed to the City Clerk; and (3) the City Clerk comply with the notice requirements of Government Code section 34458 (section 34458), subdivision (b).

The City raises two issues on appeal. First, the City contends Petitioners' writ petition was untimely. Second, the City asserts the notice requirements of section 34458 do not apply to this ballot measure. Petitioners contend the City's appeal is moot. We reverse with directions to dismiss.

### **FACTUAL AND PROCEDURAL HISTORY**

On February 9, 2016, the City's City Council adopted Resolution No. 22967 (the Resolution). The Resolution ordered that, on June 7, 2016, voters within the City would be presented with the question of whether they wanted the City's charter amended to

designate the City Attorney as the City Prosecutor with the primary duty of prosecuting misdemeanors. The Resolution ordered that the title of the ballot measure be “The Riverside City Prosecution And Crime Reduction Measure.”

The Resolution also ordered the City Attorney to prepare an impartial analysis of the measure, “showing the effect of the measure on existing law and the operation of the measure.” Two days later, on February 11, the City Clerk certified the resolution. The City Attorney’s impartial analysis was submitted to the City Clerk’s Office on March 21.

On April 1, Petitioners filed a Verified Petition for Writ of Mandate in the trial court. Petitioners raised three arguments in their petition: (1) the title of the ballot measure was “not only inherently biased, but misleading, argumentative, and prejudicial”; (2) the City Attorney should not have drafted the impartial ballot language when the measure directly affected the City Attorney’s office; and (3) the City failed to comply with notice requirements for the measure, such as public hearings (Gov. Code, § 34458).

The City opposed the writ petition. The City asserted (1) the challenges to the title and impartial analysis were time-barred; (2) the title and impartial analysis were fair and unbiased; and (3) the City provided sufficient notice of the measure.

On April 8, the trial court held a hearing in the matter. The trial court invited the parties to attend mediation on the issue of the title’s wording and the possibility of changing the author of the impartial analysis. The parties agreed to mediate, and the trial court provided a mediator. As a result of the mediation, the parties agreed to (1)

change the title to “Transferring State Misdemeanor Prosecutions to the City’s Attorney’s Office”; and (2) the City Clerk would be the new author of the impartial ballot language.

The trial court gave a tentative opinion on the notice issue, which reflected the following: The trial court tentatively found the City did not comply with the statutory notice requirements. As to the remedy, the trial court tentatively concluded it was only empowered to tell the City to comply with the notice requirements, i.e., it was not empowered to have the County’s Registrar of Voters remove the measure from the ballot.

Petitioners explained it was not their desire to keep the measure off the ballot. Petitioners said, “It’s never been the [Petitioners’] desires to keep this measure from the voters. They have a right to vote on it. They have a right to be informed, but they have a right to vote on it. At this point, I think any cause of action that would further challenge it would have to come after the vote and would effectively challenge the validity of the vote based on the failure of public notice. [¶] So I think the Court makes the finding now, and then we reserve until after the election to effectuate any change.”

The trial court found the City did not comply with the statutory notice requirements, and thus violated section 34458. The court then said, “And all I can do is order the generic remedy. And the generic remedy is the City of Riverside, City Clerk Colleen Nicol is directed to comply with 34458(b). [¶] I don’t think there’s anything else to do.”

The trial court issued an Order After Hearing changing the title of the measure to “Transferring State Misdemeanor Prosecutions to the City Attorney’s Office” and changing the author of the impartial analysis to the City Clerk. The trial court also issued a minute order requiring the City Clerk to comply with the statutory notice requirements of section 34458, subdivision (b). The minute order describes the ruling as the writ being “granted in part.”

On April 11, the City petitioned this court for a writ of mandate and requested an immediate stay. (*Nicol v. Superior Court* [E065729].) On April 12, this court denied the writ petition and the request for an immediate stay. (*Nicol v. Superior Court* [E065729].) The election was held on June 7. The measure to transfer misdemeanor prosecutorial responsibility to the City Attorney did not pass.<sup>1</sup>

## **DISCUSSION**

The City asserts (1) Petitioners’ writ petition in the trial court was untimely; and (2) the measure was exempt from the notice requirements of section 34458. Petitioners assert the issues raised by the City are moot. Petitioners reason that, because the measure did not pass, this court cannot provide the City with any relief.

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<sup>1</sup> This court takes judicial notice of the Riverside County Registrar of Voters and Riverside City results for the June 7, 2016, election (<http://www.voteinfo.net/elections/20160607/eresults/Election%20Result.htm>; [http://www.riversideca.gov/city\\_clerk/june-7-2016-election-results.asp](http://www.riversideca.gov/city_clerk/june-7-2016-election-results.asp)), as of October 31, 2016. (Evid. Code, § 452, subds. (c) & (h); *Professional Engineers in California Government et al. v. Wilson et al.* (1998) 61 Cal.App.4th 1013, 1027 [taking judicial notice of election information].)

“‘[W]hen, pending an appeal from the judgment of a lower court, and without any fault of the defendant, an event occurs which renders it impossible for [the appellate] court, if it should decide the case in favor of plaintiff, to grant him any effectual relief whatever,’ the appeal is moot.” (*Californians For An Open Primary v. McPherson* (2006) 38 Cal.4th 735, 783.) In an election case, especially one that raises procedural challenges, the occurrence of the election can render the matter moot. (*Id.* at p. 784.)

Because the measure failed to pass, this court cannot provide the City with any effective relief. If we were to conclude all of the City’s arguments were correct, there is no remedy because the voters did not approve the measure. Accordingly, the City’s appeal is moot.

The City contends the issues it raised are not moot. The City asserts municipalities “need guidance” regarding the notice requirements of section 34458 and urges this court to “clarify the law.” Any opinion we provided regarding section 34458 would be purely advisory. While we appreciate the City’s request for this court to deliver its opinion on section 34458 we must wait for a case wherein relief could be provided, e.g., a case wherein the electorate approves the measure. “[T]he doctrine of justiciability prevents courts from issuing purely advisory opinions. [Citation.] It is rooted in the fundamental concept that the proper role of the judiciary does not extend to the resolution of abstract differences of legal opinion. It is in part designed to regulate the workload of courts by preventing judicial consideration of lawsuits that

seek only to obtain general guidance, rather than to resolve specific legal disputes.”

(*Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 170.)

An exception to the foregoing rule provides that an appellate court can render an advisory opinion “if the consequence of a deferred decision will be lingering uncertainty in the law, especially when there is widespread public interest in the answer to a particular legal question.” (*Pacific Legal Foundation v. California Coastal Com.*, *supra*, 33 Cal.3d at p. 170.) While rendering an opinion on section 34458 could perhaps be useful to some municipalities, we see no reason why this issue must be decided now rather than waiting for a case wherein a justiciable controversy exists. Accordingly, we decline to render an advisory opinion.<sup>2</sup>

Next, we consider the proper disposition of this matter. “Ordinarily, of course, when a case becomes moot pending an appellate decision ‘the court will not proceed to a formal judgment, but will dismiss the appeal.’” (*Paul v. Milk Depots, Inc.* (1964) 62 Cal.2d 129, 134.) However, the dismissal of an appeal is effectively an affirmance of the trial court’s judgment or order. (*Ibid.*; see also Code Civ. Proc., § 913.) Because the basis for the trial court’s judgment is now non-existent, due to the voters not approving the ballot measure, we should “‘dispose of the case, not merely of the appellate proceeding which brought it here.’ [Citation.] That result can be achieved by reversing the judgment solely for the purpose of restoring the matter to the jurisdiction

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<sup>2</sup> The City requests we take judicial notice of various legislative history documents related to section 34458. We grant the request as required by law. (Evid. Code, §§ 452, subd. (c), 453.)

of the superior court, with directions to the court to dismiss the proceeding. [Citations.] Such a reversal, of course, does not imply approval of a contrary judgment, but is merely a procedural step necessary to a proper disposition of th[e] case.” (*Paul*, at pp. 134-135; see also *Coalition for a Sustainable Future in Yucaipa v. City of Yucaipa* (2011) 198 Cal.App.4th 939, 947.)

The foregoing manner of dismissal applies in cases where the controversy has been rendered moot due to “subsequent legislative or administrative action.” (*La Mirada Avenue Neighborhood Association of Hollywood v. City of Los Angeles* (2016) 2 Cal.App.5th 586, 591) “Under our constitutional system the Legislature is not the exclusive source of legislative power. ‘The legislative power of this State is vested in the California Legislature which consists of the Senate and the Assembly, but the people reserve to themselves the powers of initiative and referendum.’ [Citation.] . . . The electorate’s legislative power is ‘generally coextensive with the power of the Legislature to enact statutes.’” (*Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1042.)

The City’s charter “reserve[s] to the electors of the City the powers of the initiative and referendum,” (Riverside City Charter, § 503) and provides the City’s charter may be amended “in accordance with the Constitution and the laws of the State of California” (Riverside City Charter, § 1404). Under the state Constitution, amendment of a city’s charter may be accomplished by initiative. (Cal. Const., Art. 11, § 3(b).)



The ballot measure at issue, if approved, would have amended the City's charter. Thus, when the City's electorate voted not to approve the measure, that was a legislative action in that the electorate, a body with legislative power, rejected the proposed amendment. As a result of that legislative action, the controversy in this case was rendered moot. Therefore, we will follow the procedure described *ante*, and reverse the trial court's judgment solely for the purpose of returning jurisdiction to the trial court, where the matter can be dismissed.

### **DISPOSITION**

The judgment is reversed as moot. This reversal does not imply that the judgment was erroneous on the merits, but is solely for the purpose of returning jurisdiction to the superior court by vacating the otherwise final judgment solely on the ground of mootness. The superior court is directed to dismiss the underlying action as moot. The parties shall bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)

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MILLER

J.

We concur:

McKINSTER

Acting P. J.

SLOUGH

J.